IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

WP(C).No. 32471 of 2006(N)

AGAINST THE ORDER IN EP. 86 /2005 IN
OS.334/1996 of MUNSIFF COURT, KALPETTA

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PETITIONER:

NEELIKANDI BASHEER, S/O. POCKER,
MUTTIL AMSOM DESOM.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS:

KUNHALI, S/O. MOIDEEN,
EDATHOLA POTTASSERY, MUTTIL AMSOM DESOM.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 32471 OF 2006

Dated 7th December 2006

JUDGMENT

Petitioner is decree holder. Respondent is judgment debtor. Decree is for recovery of possession. Respondent/judgment debtor challenged the decree and judgment in A.S.48/2005 unsuccessfully. It was challenged before this court in R.S.A.953/2006. This court dismissed the second appeal. But respondent was granted time to surrender vacant possession of plaint schedule building till 31/12/2006 on condition that he files an affidavit before executing court within three weeks from 25/10/2006 to unconditionally surrender vacant possession of building on or before 31/12/2006 and with liability to pay rent and that he shall not induct any strangers. Respondents filed an affidavit. According to the decree holder, affidavit filed was not in accordance with the directions in the judgment of this court and it was also not filed within time. But subsequently another affidavit was filed in accordance with the conditions provided in the judgment. This

petition is filed under Article 227 of Constitution of India for a direction to the executing court to deliver plaint schedule building. Execution petition is pending before the learned Munsiff. Learned Munsiff has to consider whether respondent is entitled to continue in possession till 31/12/2006 as directed by this court and whether proper affidavit has been filed as directed by this court in the judgment and if not to order delivery.

Writ petition is disposed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.